

Salt Lake Clinic asks the Utah Labor Commission to review Administrative Law Judge Eblen's award of benefits to S. C. under the Utah Occupational Disease Act, Title 34A, Chapter 3, Utah Code Ann.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Code Ann. § 34A-3-102(2).

BACKGROUND AND ISSUES PRESENTED

On September 24, 2001, Ms. C. filed an application for hearing to compel the Salt Lake Clinic to pay benefits under the Utah Workers' Compensation Act for Ms. C.'s left carpal tunnel syndrome. Judge Eblen held a hearing on Ms. C.'s claim on August 21, 2002, and then appointed a medical panel to consider the medical aspects of the claim. On May 9, 2003, the panel issued its report. On September 22, 2003, Judge Eblen adopted the panel's conclusions and awarded benefits to Ms. C. under the Utah Occupational Disease Act.

The Clinic now requests Commission review of Judge Eblen's decision. The Clinic argues that Ms. C.'s claim is barred because she failed to notify the Clinic of her occupational disease claim within the 180-day notice period established by §34A-3-108 of the Occupational Disease Act. Alternatively, the Clinic argues that, even if Ms. C. met the 180-day notice requirement, her right to payment of medical expenses must be apportioned pursuant to the provision § 34A-3-110 of the Occupational Disease Act.

DISCUSSION

Having considered the issues raised by the Clinic, the Commission concludes that several issues should be addressed by Judge Eblen. First, Judge Eblen should explain why Ms. C.'s claim, filed under the Workers' Compensation Act, was adjudicated under the Occupational Disease Act. Second, assuming the case is properly considered as an occupational disease claim, Judge Eblen should determine the date on which the claim arose. That determination is necessary to a proper application of the Occupational Disease Act's 180-day notice requirement. Third, Judge Eblen should explain her apparent conclusion that Ms. C.'s purported failure to meet the 180-day notice requirement can be excused if there is no "prejudice" to the employer. Finally, Judge Eblen's conclusion that medical expenses are not apportioned under the Occupational Disease Act appears to be contrary to the Commission's decision on that issue in Milligan v. Utah Tax Commission, Case No. 00-0232, issued on April 30, 2002.

On remand, Judge Eblen will issue a new decision that addresses these matters and any other issues that Judge Eblen deems relevant to the proper resolution of Ms. C.'s claim.

ORDER

The Commission remands this matter to Judge Eblen for further proceedings consistent with

this decision. It is so ordered.

Dated this 18th day of May, 2004.

R. Lee Ellertson
Utah Labor Commissioner